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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,210	11/25/2003	John F. Kunstmann	84983	6807

7590 10/20/2004

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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,210

Applicant(s)

KUNSTMANN, JOHN F.

Examiner

Bret C Hayes

Art Unit

3644

NY

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 1,6 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 1, 6 and 9 are objected to because of the following informalities: claim 1, line 6, claim 6, line 6, and claim 9, lines 3 and 8 (2X), it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform and does not constitute a limitation in any patentable sense [*In re Hutchinson*, 69 USPQ 138]; and, also, claim 1, line 26, claim 6, line 23, and claim 9, lines 9 and 30 (2X), replace “a” with --the--, before the recitations of “projectile”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Nos. 5,837,919 to Yagla et al. (Yagla) in view of 5,679,917 to Bitsakis et al. (Bitsakis).

4. Re – claims 1 – 8, Yagla discloses the invention substantially as claimed including an inner tube 26 and an outer tube 28 fixedly coupled together with at least one gas flow channel therebetween, and a ring 16 fixedly coupled to a first end of the outer tube 28, a cap 24 having a concave inner surface. However, Yagla does not disclose the ring 16 being adjacent the breech end of the inner tube 26, the cap 24 defining a key shaped for passage through a keyway of the ring 16 as claimed.

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5. Bitsakis teaches a ring 16 so adjacent and a cap 14 so defining in the analogous art of breech plug support mechanisms for the purpose of blocking the breech of a weapon after loading. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yagla to include the ring and cap as taught by Bitsakis in order to block a breech end of a portable launcher.

6. Re – claims 9 – 11, Yagla in view of Bitsakis discloses the claimed invention except for an arrayed arrangement of reloadable launchers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the disclosed claimed invention in an arrayed arrangement of reloadable launchers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/6/04



TERI P. LUU
SUPERVISORY PRIMARY EXAMINER